

1 MINUTES

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3 The State Board of Elections board meeting was held on Tuesday, October 9, 2018
4 in Senate Room 3 of the Virginia State Capitol, Richmond, Virginia. In attendance: James
5 Alcorn, Chairman, Clara Belle Wheeler, Vice Chair, and Singleton McAllister, Secretary,
6 represented the State Board of Elections (“The Board”). On behalf of the Department of
7 Elections (“ELECT”) was Christopher E. “Chris” Piper, Commissioner, and Jessica
8 Bowman, Deputy Commissioner. In attendance, representing the Office of the Attorney
9 General (“OAG”), was Heather Hays Lockerman, Assistant Attorney General. Vice Chair
10 Wheeler called the meeting to order at 11:47 AM.

11 The first order of business was the Commissioner’s report, presented by
12 Commissioner Piper. The Commissioner said ELECT was working overtime to prepare
13 for the November General Election, and that staff had seen more interest and was expecting
14 higher voter participation than most midterm elections. Commissioner Piper stated that in
15 September 2014, the last midterm election, there were 16,578 new registrations; in
16 September 2018, there were 31,197 new registrations. The Commissioner noted there was
17 also an increase in absentee ballot requests, especially from college students. The number
18 of absentee ballot applications exceeded the number of those requested in 2017. The
19 Commissioner stated that ELECT and the elections community were prepared to deal with
20 the increase in these numbers.

21 Commissioner Piper said that ELECT was beginning to implement two-factor
22 authentication to improve security for the Virginia Election and Registration Information
23 System (“VERIS”). The authentication system was being rolled out, and would be
24 implemented across the state by October 28, at the latest. The Commissioner gave an
25 update on the Virginia Elections Benchmark Index Workgroup (“Benchmark
26 Workgroup”), informing the Board that the Benchmark Workgroup had split into
27 subgroups in order to focus on creating benchmarks for elections in Virginia.
28 Commissioner Piper stated that the subgroups would focus on collecting data, and how to
29 report the data; the members had also been collecting information on other states and the
30 election benchmarks set there. The Chair of the Benchmark Workgroup would give the
31 Board a full update in January. Commissioner Piper informed the Board on the progress

32 of the express advocacy regulation. The Commissioner stated ELECT had completed most
33 of the first phase in creating the regulation. There will be a public hearing at the November
34 19 Board meeting in order to move forward with the regulatory process.

35 Chairman Alcorn asked if there had been any pushback on the express advocacy
36 regulation in terms of content, or in terms of the regulatory process. Commissioner Piper
37 said no, and that the regulation had been published for public comment but had not received
38 any. Arielle A. Schneider, ELECT Policy Analyst, corrected the Commissioner, stating
39 the regulation had not yet been published, but would be published by October 19 to begin
40 receiving public comment. Chairman Alcorn asked if the Board needed to take an
41 affirmative vote to move the regulation forward for public comment, and Ms. Schneider
42 said that the Board did not need to take any further action.

43 Chairman Alcorn noted there had been concerns from the elections
44 community on the timing of two-factor authentication implementation. The Chairman
45 recognized the importance of the increased security measure, but asked why ELECT had
46 waited until so close to the election to implement it. Commissioner Piper acknowledged
47 that the timing was not ideal, and said that staff ran into a number of issues in preparing
48 the process; but the Commissioner assured the Board that the transition would be smooth.
49 The Commissioner said after speaking with the elections community on their concerns,
50 including access for temporary staff, that most of the localities' concerns had been
51 addressed. The two-factor authentication would require staff to enter a password, and then
52 receive a voice call or text message with a code in order to log into VERIS. Chairman
53 Alcorn clarified that the measure was extra security, and that while the timing was not
54 ideal, that the process was useful and necessary. Commissioner Piper agreed, and said
55 input from the general registrars and electoral boards was valuable in creating the process
56 and ensuring the transition was smooth. Chairman Alcorn asked the Commissioner if there
57 was anything he was worried about in regards to the election. Commissioner Piper said
58 that while no one could be sure what could happen, ultimately, ELECT staff and localities
59 had been working hard on security, efficiency, communication, and more in order to be as
60 prepared as possible for November.

61 Chairman Alcorn asked the Commissioner about the duties of subgroups of the
62 Benchmark Workgroup. Commissioner Piper said the subgroups were focusing on

63 collecting data, reviewing and clarifying the Code requirements and assignments of
64 requirements, and how to best collect data. The Commissioner said the Benchmark
65 Workgroup had paused in their work.

66 Vice Chair Wheeler noted that during the Department of Motor Vehicles (“DMV”)
67 presentation a few months earlier, a state-to-state registration DMV check was mentioned.
68 The Vice Chair stated that the DMV was working with other states to identify voters who
69 may have applied to register to vote in other states. The Vice Chair asked if ELECT had
70 received any information from the DMV on this topic. Commissioner Piper said he
71 recently met with Commissioner Holcomb of the DMV on how to improve ELECT and
72 the DMV’s relationship and cooperation, and said the departments would meet closer to
73 the election; he would bring up the Vice Chair’s question with Commissioner Holcomb
74 then. The Commissioner stated that ELECT was participating in the Electronic
75 Registration Information Center (“ERIC”) program, as well as the Interstate Crosscheck
76 program (“Crosscheck”), to receive similar information on possible out-of-state or
77 duplicate registrations. Vice Chair Wheeler asked how often ELECT traded voter
78 information with these programs. Commissioner Piper said that ERIC and Crosscheck
79 provided lists to ELECT annually, but said he would check on this information to be sure
80 this response was accurate.

81 Commissioner Piper stated that once ELECT received a list of voters from these
82 programs, ELECT would send the voter a letter. If the voter responded to the letter, then
83 the general registrar would process the received information appropriately. If the voter did
84 not respond within 30 days, they would be placed into “Inactive” status, and remain that
85 way for two general elections. If the voter did not go to the polls within those two general
86 elections, the voter would be cancelled. Vice Chair Wheeler recalled a recent incident with
87 a voter who claimed they had requested an absentee ballot but never received it. ELECT
88 discovered that the voter had never completed the request for the absentee ballot online.
89 The Vice Chair acknowledged this situation was the fault of the voter but asked for ELECT
90 and the elections community to continue searching for solutions to issues like this.
91 Commissioner Piper assured the Board that ELECT’s working relationship with the DMV
92 would allow them access to additional transaction records for quicker resolution, and that
93 the two agencies were always working to find new ways to improve the system.

94 Vice Chair Wheeler asked for an update with issues VERIS had been having.
95 Commissioner Piper recalled a previous year where the system was unavailable at a critical
96 time because of low capacity. The Commissioner informed the Board that ELECT
97 reconfigured parts of the system to prevent a similar situation from happening in the future.
98 The Commissioner said that when the system went down, ELECT was averaging 150 hits
99 per second on their citizen portal; the system was unable to handle this load and
100 subsequently failed. Commissioner Piper said after doing a recent load test, the system
101 was able to handle 1,600 users per second. The Commissioner assured the Board that
102 VERIS was stronger and more secure, and that staff was prepared for the upcoming voter
103 registration deadline.

104 Secretary McAllister asked if ELECT and/or the localities needed any additional
105 support or resources. Commissioner Piper responded that while more money, staff, and
106 resources would always be helpful, locality staff and ELECT staff were working
107 exceptionally hard to be prepared for the election. The Commissioner said that
108 communication was greatly improved, and that coordination between different agencies
109 had been efficient and effective.

110 The next order of business was to approve the minutes from the September 20, 2018
111 meeting. Secretary McAllister moved *the Board approve the September 20, 2018 minutes*.
112 Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

113 The next order of business was the ballot order drawing for all general and special
114 elections between November 7 and next May's general election, presented by Matthew
115 Abell, ELECT Election Administrator. Mr. Abell said the Board would be drawing the
116 ballot order specifically for the January 15, 2019 special election in Pulaski County, as well
117 as any subsequent General Assembly specials that may arise from the general election in
118 November. Mr. Abell explained the Board would draw first for the order of recognized
119 political parties: the Democratic and Republican parties. The Board would then draw for
120 unrecognized political parties: the Constitution, Green, Independent Green, Libertarian,
121 and Whig parties. Mr. Abell stated the Whig party was a new non-recognized political
122 party as of the November 2017 election, and that the group had provided the required,
123 substantiation documents. Mr. Abell recommended the Board determine by lot and then

124 certify the ballot order for the general and special elections being held between November
125 7, 2018 and May 7, 2019, including any not yet ordered.

126 The names of the recognized and non-recognized parties were put into identical
127 black film canisters, placed in a glass bowl, mixed, and then drawn one by one by the
128 members of the Board.

129 For the first drawing, Secretary McAllister drew first and drew the Republican
130 party. Vice Chair Wheeler drew second and drew the Democratic party. Therefore, the
131 ballot order would be:

- 132 • Republican
- 133 • Democratic

134 For the second drawing, Vice Chair Wheeler drew the Whig party. Chairman
135 Alcorn drew the Libertarian party. Secretary McAllister drew the Constitution party. Vice
136 Chair Wheeler drew the Independent Green party. Chairman Alcorn drew the Green party.
137 Therefore, the ballot order would be:

- 138 • Whig
- 139 • Libertarian
- 140 • Constitution
- 141 • Independent Green
- 142 • Green

143 Chairman Alcorn moved *the Board certify the determination by lot of the ballot*
144 *order for all general and special elections being held between November 7, 2018, and May*
145 *7, 2019 including any not yet ordered.* Vice Chair Wheeler seconded the motion, and the
146 motion passed unanimously.

147 The next order of business was for the Board to review the proposed amendments
148 to the petition regulations, presented by Samantha Buckley, ELECT Policy Analyst. The
149 proposed amendments were in response to the issues with the petitions submitted by
150 candidates Shaun Brown and Peter Wells. One of the amendments would be to state that
151 if a candidate's address on the petition does not match the candidate's voter registration
152 address at the time of the circulation of the petition, that would be considered a material
153 omission, thereby rendering the petition invalid. The other proposed change was clarifying

154 that a petition signature would not be counted as invalid if the signer failed to provide a
155 year in the "date" section of the petition.

156 The Chairman recommended a non-substantial grammar change. Vice Chair
157 Wheeler thanked Ms. Buckley for the presentation of the documents. Chairman Alcorn
158 asked the regulation changes be posted for public comment, though the Board was exempt
159 from this requirement. The Chairman stated the Board preferred to do public comment
160 when possible, and the Vice Chair agreed. Commissioner Piper suggested the regulation
161 be posted for public comment before being brought back before the Board during the
162 November 19 meeting. Vice Chair Wheeler asked if petition pages could be modified to
163 clarify that the "date" section meant "month, day, year." Deputy Commissioner Bowman
164 pointed out that the regulation revisions being presented would change the requirement for
165 a petition signer to provide a date at all, so was not sure editing the form would be
166 necessary.

167 The next order of business was a Stand By Your Ad ("SBYA") hearing, presented
168 by Ms. Schneider. The first and only SBYA complaint was against Sal Romero. Ms.
169 Schneider stated that upon receiving notice of the need for disclosure, Mr. Romero posted
170 public notice in an attempt to inform the public of the mistake, and attempted to amend and
171 remediate the undisclosed signs. Mr. Romero also provided the Board with a letter. Ms.
172 Schneider, after informing Mr. Romero of the need for disclosure, also informed him that
173 the font minimum was 7-point for items like business cards and flyers, but that the
174 requirements for a yard sign was that the disclaimer had to be able to be viewed from a
175 reasonable distance. The letter Mr. Romero provided to the Board also included an
176 apology, explanation, and recollection of his attempts to remedy the situation, qualifying
177 him for the 50% reduction for a first time violation. Ms. Schneider recommended a \$50
178 penalty.

179 Chairman Alcorn asked if the sign in question met the definition of express
180 advocacy. Ms. Schneider said that it did, as it read "Sal Romero for City Council," with
181 "for City Council," in Spanish; the use of the "magic words" meant the advertisement met
182 the definition of express advocacy. Vice Chair Wheeler asked how long the signs were up
183 before the apology was sent and the signs were corrected and properly disclosed. Ms.
184 Schneider said it was an unknown number of weeks. Vice Chair Wheeler stated that

185 candidates need to know this information; while it was helpful that Mr. Romero apologized
186 and attempted to fix the signs, every candidate should know that a disclosure is necessary.
187 Ms. Schneider stated that an image of only one sign was submitted as evidence in the
188 complaint, but that both the complainant and Mr. Romero disclosed that there were 50
189 signs distributed without the proper disclosure. Ms. Schneider said that it was within the
190 Board's jurisdiction to assess a higher penalty, as each of the 50 signs could constitute a
191 violation. Ms. Schneider reminded the Board of a previous SBYA hearing, against Ned
192 Gallaway, where 40 signs were circulated without disclosure, resulting in a \$800 penalty.

193 Chairman Alcorn moved, *subject to the Board's authority under the Code of*
194 *Virginia §24.2-955.3, to find Sal Romero for City Council in violation of §24.2-956 Stand*
195 *By Your Ad print media disclosure requirements with regard to a print media*
196 *advertisement, and assess a \$50 penalty.* Vice Chair Wheeler seconded the motion, and
197 the motion passed unanimously. Ms. Schneider noted the other SBYA hearing listed in the
198 working papers, against Paloma Saucedo de la Pena, was postponed, as the notice sent to
199 the candidate was returned undelivered. Upon proper notice, Ms. De Saucedo's hearing
200 would be during the November 19 Board meeting.

201 The next order of business was to review the date for the public hearing for the
202 status of the express advocacy regulation. Chairman Alcorn noted Commissioner Piper
203 had already reviewed the status of the regulation during the Commissioner's report. Ms.
204 Schneider suggested the public hearing on the regulation be held during the November 19
205 Board meeting, to give the proper amount of time for the regulation to receive public
206 comment.

207 The next order of business was for the Board to have a closed session. This item
208 was struck from the docket, and the Board did not have a closed session.

209 Vice Chair Wheeler asked about if and when the Board would address and review
210 the GREB Workgroup's annual report. Chairman Alcorn recalled that the Board had
211 already reviewed the Workgroup's report. The Chairman stated the Board discussed the
212 report, and Commissioner Piper provided the Workgroup with the Board's responses; if
213 the Workgroup was looking for additional feedback, they should contact the Chairman
214 directly. Vice Chair Wheeler addressed security at the polling places on Election Day, and
215 urged election officials to be in contact with local law enforcement and security in the event

216 there was a disturbance at any polling place. Commissioner Piper stated that on October
217 16, 2018, ELECT would host a Continuity of Operations (“COOP”) meeting with major
218 partners including: the Sheriff’s Office Association, State Police, and Capitol Police. The
219 meeting would involve discussing communication. Commissioner Piper informed the
220 Board that ELECT had the ability to text regions, or the entire state, about issues that may
221 arise on Election Day. The Commissioner also stated that the Fusion Center, Federal
222 Bureau of Investigation, and Department of Homeland Security would be reviewing social
223 media and communicating via chat to share information.

224 Chairman Alcorn then moved to adjourn the meeting. Vice Chair Wheeler
225 seconded the motion, and the motion passed unanimously. The meeting was adjourned at
226 approximately 12:59 PM. The next Board meeting will be on November 6, 2018, during
227 the November General Election.

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Secretary


Chair


Vice Chair